



March 5, 2003

TO: Members Management Group

FROM: Rod Sando

SUBJECT: DRAFT Action Notes

**Members Management Group Meeting  
February 5, 2003**

Draft Action Notes

If there are not objections to these action notes within five days from the date of this document, they will become final and will be posted to the CBFWA web site.

**Attendees:** Lynn Hatcher (YN), Dave Ward (ODFW), Amos First Raised and Lawrence Schwabe (BPT), Bryon Flett (STI), Catriona Black (CRITFC), Gary James, Carl Scheeler and Raphael Bui (CTUIR), Michele DeHart (FPC), Bill Hutchinson (IDFG), Mark Bagdovitz and Maureen Smith (USFWS), Dave Statler (NPT), Rod Sando, Jann Eckman, Tana Klum, Kathie Titzler, Tom Iverson, Neil Ward, Frank Young, and Mary Marvin (CBFWA)

**By Phone:** Mattie Allen (SPT), Doug Taki (SBT), Ray Entz and Deane Osterman (Kalispel), Robert Matt and Anders Mikkelsen (C d' AT) Joe Peone (CTRC), Ron Peters (Cd' AT), B.J. Kieffer and Mary Verner (STI); Jerry Marco and Keith Wolf (CTCR), David Johnson (WDFW), Dave Johnson (NPT), Joe Mentor (Mentor Law Group)

<b>Time</b>	Objective 1. FY 2003 Renewal Process	85%
<b>Allocation:</b>	Objective 2. Rolling Province Review and Subbasin Summaries	15%
	Objective 3. FY 2002 Adjustments	%

**Agenda Changes** It was requested that Item 2 be moved to Item 1 due to a CBFWA staff member's scheduling conflict.

**ITEM 1: Mainstem Amendments**

9:20 – 9:30

Neil Ward indicated that an objection was received from the Kootenai Tribe of Idaho (KTOI) relative to the first bulleted statement under Principle 10 of the *Draft Mainstem Principles*. The KTOI issued this objection because it is their perception that the interim VARQ, which is identified in the bullet statement, was not developed using the best available forecasting methodology. Neil indicated that Sue Ireland (KTOI) and Brian Marotz (Montana Fish, Wildlife, and Parks (MFWP)) were scheduled to meet on February 5, 2003, to negotiate an agreement relative to a modification to the first bulleted statement under Principle 10.

The KTOI and MFWP resolved their differences relative to the first bulleted statement under Principle 10 as follows:

*Original* – Use variable discharge (i.e., VARQ) as interim (current rule curves prevent “natural hydrograph”)

*Revised* – Use the variable discharge strategy, within existing flood constraints (current rule curves prevent “normative hydrograph”)

Rod Sando indicated that to date, no objections had been received relative to CBFWA’s FPC recommendations which stated that the board established by NWPCC should remain, but supervision of FPC be maintained by CBFWA

**ITEM 2: Bonneville Financial Crisis**

9:30 - 11:19

CBFWA staff has not yet drafted a letter to the NWPCC regard BPA’s financial crisis. Tom Iverson reported that he attended the 1/27 NWPCC meeting at which Council staff was approved to move forward with budget cuts and province level meetings. Last Wednesday, Council staff reviewed the accrual estimates for the provinces based on the FY01 Start-of-Year budget allocations. Several issues were uncovered that indicated that the accrual situation may not be as bad as BPA has described. See the notes from the January 29 meeting for details. Tom Iverson encouraged Members to contact Doug if they had a better method of province level allocation for the NWPCC.

Tom believes that Doug and NWPCC staff may have made some changes in their approach to the budget issues and may be more willing at this time to use caution in examining BPA’s demands. The NWPCC has decided to monitor progress of implementation, and has put off the province level meetings until March. At the NWPCC meeting on 2/13/03, Doug will present the results of the NWPCC’s efforts to “true up” accruals and present an approach to managing implementation rather than extreme project cuts.

A clear definition of capitalization is still needed, and this definition is currently being determined by Congress. CBFWA staff believes that there is plenty of flexibility in BPA’s definition of capital, but as policy, BPA is choosing not to capitalize fish and wildlife projects.

During discussion, it was posited that it may be a conflict of interest for

BPA to push the new accrual process without an associated carry over policy. BPA presentations on fish and wildlife spending are misleading and indicate an unwillingness to fund fish and wildlife projects. It appears that BPA's information and data management systems are seriously flawed, and this leads to confusion within the agency, as well as among affected fish and wildlife agencies.

Rob Lothrop recommended that Members challenge BPA's spending level allocations and stated that promises made in the rate case should be promises realized. He also recommends that Members must determine how to be instrumental in directing any budget cuts that may need to occur. He believes that more diligence is needed by CBFWA to self-monitor this situation, and that a parallel database will likely be developed to track BPA-related project spending.

Managers have written letters to BPA and to politicians which touch on resolving the MOA carryover, the capital borrowing authority issue, violation of tribal policies, concerns about BPA's policies and procedures, and questions regarding contract renewals and no-cost extensions. Most of those at the table did not want to sign their contracts because of subtle changes in the language that could have major implications, according to their tribal attorneys. Joe Mentor had joined the meeting via telephone by this point and discussed the Termination for Convenience clause that is found in most of the contracts. He said that he has not had an opportunity to examine this clause, but that "T4C" clauses are common in government. However, these clauses do carry some liabilities for the government, should they be invoked, such as remuneration for damages. (See Action #1.) It was felt important to push BPA for a policy to bridge contracts.

Joe Mentor updated the MMG on the issue of the borrowing authority. A request was made that BPA's borrowing authority be increased by \$700M. This has passed in the Senate, but not in the House. This borrowing authority is similar to a revolving fund. In a letter to BPA, NWPC asked for \$180M of these monies to implement the fish and wildlife program. BPA would want to seek credit against the \$139M for projects associated with land acquisition. Joe believes that BPA is attempting to force acceptance of the \$139M, and is using other pressures to get tribes to approve the borrowing authority. Joe stated that if capitalization could be implemented, the deficit would reduce to approximately \$10M.

It was felt important to focus on expanding the borrowing authority to cover land and water acquisition and working with BPA to change its view of carryover. Then a new MOA can be developed.

#### ACTIONS

1. A copy of the Termination for Convenience clause will be sent to Joe Mentor for his examination.
2. Members will forward all offensive contract language to CBFWA. CBFWA will prepare a draft Consent Mail for a written position on the issue of contract language, using information garnered from all

available legal sources.

3. CBFWA will create a Best Business Management Practices task force to produce a white paper in May or June 2003, regarding core business recommendations. Tom Iverson will lead this group.

**ITEM 3: Research, Monitoring & Evaluation**

11:19-11:26

Frank Young presented a draft letter from Rod Sando to Sarah McNary requesting that promised written comments on the CBFWA Collaborative Proposal be provided prior to any further informal staff level meetings on the CBFWA Proposal. Frank said that he believed that the letter was necessary since further discussion with BPA would not be constructive without a clear statement of BPA's intent regarding funding of the CBFWA Proposal. MMG members provided editorial comments on the letter.

**ACTION**

The letter (as modified by editorial recommendations) was approved for Consent Mail distribution.

**ITEM 1 revisited**

11:26-11:35

This item was reviewed for the benefit of some phone participants who had been unable to hear the original dialogue.

**ITEM 4: Training and Education for the CBFWA**

11:35-11:38

A consultant interviewed staff in order to develop a proposal for improving CBFWA's operation. Due to time constraints, it was suggested that this item be further discussed at the next MMG meeting, and that the discussion focus on alternate sources of funding. Kathie Titzler has already attended a seminar on applying for grants.

**ITEM 5: CBFWA Financial Audit Report**

11:38-11:45

The CBFWF FY02 financial audit was clean with no reportable findings. Kathie requested that FY 2002 billings be submitted to her by February 28. Kathie stated that there is currently \$402,898 left unspent for Members and that BPA has noticed this amount has not been billed. Since BPA is implementing an accrual based accounting system and the incoming bills will be deducted from FY 03, not FY 02 this could adversely affect our budget on the next contract and future contracts, so it will be even more important to get bills in early, preferably on a monthly basis.

**ITEM 6 Strategic Planning**

**ITEM 7 Fish and Power Workshop**

Due to time limitations, Item 6 will be discussed at a later meeting, and Item 7 was deleted from the agenda.

**Next MMG Meeting:**

Tuesday, February 25, 2003